

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Court File No. 08-MDL-1958 (ADM/RLE)

In re Zurn Pex Products Liability Litigation

**MEMORANDUM IN SUPPORT OF
MOTION FOR DESIGNATION OF
PLAINTIFFS' LEAD COUNSEL AND
PLAINTIFFS' STEERING
COMMITTEE**

INTRODUCTION

Counsel for the plaintiffs in the actions presently pending before the Court, as well as those designated as “tag along” actions, jointly submit this application for designation of the plaintiffs’ leadership and organizational structure of this MDL. The attorneys representing the plaintiffs in the ten putative class actions currently filed in this litigation have concurred on an organizational structure for the handling of this litigation.¹

The attorneys and law firms involved in this proposed structure have substantial experience handling and leading complex class action and mass tort litigation. They have already been actively litigating cases involving the premature failure of Zurn pex plumbing systems and are prepared to commit the resources necessary to represent the

¹ Those cases are: *Adams, et al. v. Zurn pex, Inc., et al.* – District Court, Southern District of Alabama – Case No. 08-484; *Barnes, et al. v. Zurn Pex, Inc., et al.* – North Dakota District Court – Case No. 2007cv00074; *Coppersmith Plumbing v. Zurn Pex, LLC, et al.* – Colorado District Court – Case No. 2008cv01681; *Cox, et al. v. Zurn Pex, Inc., et al.* – Minnesota District Court – Case No. 2007cv03652; *Madison, et al. v. Zurn Industries, LLC, et al.* – District Court, Eastern District of North Carolina – Case No. 2008cv00076; *Minnerath, et al. v. Zurn Industries, LLC* – Minnesota District Court – Case No. 2007cv04849; *Nicodemus v. Zurn Pex, Inc., et al.* – Montana District Court – Case No. 2008cv00065; *Oelfke v. Zurn Pex, Inc., et al.* – Minnesota District Court – Case No. 2008cv01681; *Rose, et al. v. Zurn Pex, Inc., et al.* – District Court, Western District of North Carolina – Case No. 2008cv00220; *Vtipil v. Zurn Pex, Inc., et al.* – District Court, Eastern District of Virginia – Case No. 2008cv00302

interests of all plaintiffs in this MDL proceeding. Counsel therefore respectfully request that the Court issue their proposed Pretrial Order No. 1, designating the Plaintiffs' leadership and organizational structure.

ANALYSIS

I. THE COURT SHOULD DESIGNATE COUNSEL FOR THE PROSECUTION AND COORDINATION OF THE PLAINTIFFS' CASES AND ANY TAG ALONG ACTIONS.

To foster the efficient and orderly progress of an MDL, the transferee court usually designates counsel to act on behalf of other counsel and parties. *Manual for Complex Litigation*, Fourth, § 10.221 (2004). Typically, the court will designate Lead Counsel, Liaison Counsel and any relevant committees. *Id.* The transferee court has wide discretion to craft designation orders to meet the needs of the particular litigation. *Id.*

Counsel for the plaintiffs in the cases currently pending against Zurn have agreed on a proposed structure they believe will foster the orderly and efficient progress of this litigation. In their proposed Pretrial Order No. 1, counsel have identified Plaintiffs' Lead Counsel, Plaintiffs' Liaison Counsel, Plaintiffs' Steering Committee and Defendant's Lead Counsel. (See Proposed Pretrial Order No. 1). Counsel have also suggested, consistent with the form pretrial orders set out in the *Manual for Complex Litigation*, the designated responsibilities for attorneys serving in those roles. *Id.*; *see also In re Worldcom, Inc. Erisa Litig.*, No. 02 Civ. 4816, 2002 WL 31599531, at *1 (S.D.N.Y. 2002) (outlining responsibilities of lead counsel) (copy attached to the Affidavit of

Shawn M. Raiter); *In re Sprint Corporation Securities Litig.*, 164 F.Supp. 1240, 1245 (D. Kan. 2001) (discussing role of liaison counsel).

II. COUNSEL APPLYING FOR DESIGNATION HAVE SUBSTANTIAL EXPERIENCE NECESSARY TO LEAD AND COORDINATE THIS LITIGATION.

The attorneys and firms proposed for designated leadership and committee positions have substantial experience litigating complex class action and mass tort cases. All counsel have experience in products liability, construction defect and similar litigation. (See attorney and firm resumes attached to the Affidavit of Shawn M. Raiter). Counsel seeking designation also have substantial MDL experience, including experience in leadership and committee positions. (*Id.*).

The attorneys seeking designation here also have experience in class action litigation involving products similar to the plumbing products at issue here. For example, some of the attorneys were involved in the polybutylene pipe plumbing litigation while others have been involved in cases involving radiant floor heating products, defective siding, defective roofing, and other defective building products. (*Id.*).

In addition, many of the attorneys seeking designation have worked well together in other cases. This history of counsel's ability to work collaboratively in class action and mass tort litigation should help this court to resolve this MDL in an efficient and coordinated manner.

CONCLUSION

Plaintiffs respectfully request that this Court enter an order designating Plaintiffs' Lead Counsel and Plaintiffs' Steering Committee as suggested in proposed Pretrial Order No. 1.

Dated this 2nd day of September, 2008.

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***ON BEHALF OF THE COUNSEL
IDENTIFIED IN PROPOSED PRETRIAL
ORDER NO. 1***